

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 716 OF 1989

Rahul Anant Ganeshwadi Appellant

V/s

The State of Maharashtra . . Respondent

Shri Satish Maneshinde with Sayaji Nangre for Appellant

Shri P.S.Hingorani, APP for State

CORAM: D.G. DESHPANDE AND

S.R. SATHE, JJ.

DATED: 23rd Feb. 2007

ORAL JUDGMENT :- (Per S.R. SATHE, J)

1. The appellant, original accused, in Sessions case NO.65 of 1988 has preferred this appeal against the judgment and order passed by the Court of Additional Sessions Judge, Kolhapur whereby the accused was convicted for the offence punishable under Section 302 of IPC and sentenced to suffer imprisonment for life.

2. Brief facts giving rise to this appeal are as under:

3. Deceased Arati Anil Janib, aged about 20 years was studying in Polytechnic College, Jaysingpur. She was in second year. The accused was also studying in the same class. Arati was residing along with her parents in Flat No.16, Parijat Housing Society A at Ichalkarnji. Deceased and accused came into contact with each other as classmates and their relations developed and they fall in love with each other. It is the prosecution case that both of them had in fact decided to marry with each other. Admittedly, at times both of them used to go to each other's house. However, the parents of deceased Arati were rather reluctant to give their daughter in marriage to the accused. Admittedly, the accused was of a different caste. His financial position was also not sound. The parents of deceased Arati had therefore suggested that accused should first complete his education and get settled and then they may think of marriage. This was of course not liked by the accused and time and again he was insisting that Arati should marry with him. The parents of Arati had practically prohibited her from meeting the accused. Probably, this was also communicated by Arati to the accused.

4. On 5-4-1988 at about 11-00 a.m. or so deceased Arati had gone to attend the coaching class of Prof. Nadaff PW 7. She was returning from the class at about 12-15 noon. At that time accused met her on way when

she was near from Parijat Society. There was some exchange of words between them and then accused took out a knife from his pocket and gave 3 blows on the chest of Arati as a result of which she fall on ground. At that very time PW 15 - Lilavati Dundappa Birajdar, a resident of Parijat Housing Society was standing in her gallery and from there she saw Arati having fallen down. She, therefore, immediately told the said fact to Arati's mother Vaijayanti. Naturally, Vaijayanti rushed towards the place where Arati had fallen. When she was proceedings in that direction the accused who was then wearing yellow colour shirt met her and said "I killed your Arati". The distance between Parijat Society and the place where the incident took place is about 150 ft. Immediately after the incident some persons gathered there. Dr.Chaudhary who was near from the said place was also called. He immediately gave a phone call to KEM Hospital for ambulance. When he was returning to spot he noticed Police van coming from Yadav Spinning Mill. Naturally, he stopped the said van and informed the Police about the said incident. Police then immediately reached the spot and took Arati in the van. At that very time somebody pointed out that the accused is sitting near from the said place. So, Police also took him in the Van. When Arati was taken to hospital, she was declared to be dead. Appellant then drew the inquest panchanama and also sent the dead body for post mortem. In the meantime Arati's mother Vaijaniti Janib

filed complaint with Police. The accused was also brought to the Police Station. Police then drew the arrest panchanama in the presence of panchas and also attached the clothes which were on the person of the accused. Police also attached chappals and other articles of the accused. Police also visited the place of offence and drew the panchanama and collected earth containing blood from the said place. Police then recorded the statement of several witnesses. Sent the attached articles to C.A.. The doctor opined that death of Arati was caused due to haemorrhagic shock due to rupture of blood vessels and injury to right lung and pleura.

5. After completion of the investigation, Police submitted the charge sheet against the accused for the offence punishable under Section 302 of IPC in the Court of J.M.F.C., Jaysingpur.

6. Finding that the accused was charge sheeted for the offence which was exclusively triable by the court of Sessions, the learned J.M.F.C., Jaysingpur committed the case to the Sessions Court, Kolhapur.

7. The Additional Sessions Judge, Kolhapur framed charge Exh.2 against the accused for the offence mentioned above. The charge was read over and explained to the accused. He pleaded not guilty. From the

suggestions put to the PWs and from the statement of the accused recorded under Section 313 of Cr.P.C. it appears that defence of the accused is of total denial. According to him immediately after the time Arati sustained injuries he had reached there and embraced her and as such there was blood on his shirt. It is tried to be suggested that Arati might have committed suicide or somebody else who had also desire to get married with Arati might have committed her murder.

8. In order to prove the prosecution case the prosecution examined as many as 24 witnesses consisting of :

- 1) PW1 panch witness Abbas Kagawade Exh.14,
- 2) PW2 panch witness Shoukat Bagwan Exh.15,
- 3) PW3 panch witness Mahadeo Banne Exh.16,
- 4) PW4 Vishnu Arage Exh.33,
- 5) PW5 mother of deceased
Vaijanti A. Janib Exh.34,
- 6) PW6 hand writing expert Parasharam Dhotre, Exh.44,
- 7) PW7 Bashir Nadal Exh.60,
- 8) PW 8 father of deceased Anil Janib PW 63
- 9) PW 9 Suresh Javale Exh.64,
- 10) PW 10 Noorjanhi Exh.66
- 11) PW 11 Shirish Halda Ikar Exh.69
- 12) PW12 Dr.Dattatraya Chougule Exh.79,
- 13) PW 13 Baburao Naik Exh.71

- 14) PW 14 Sunanda Somani Exh.73
- 15) PW 15 Lilawati Birajdar Exh.74,
- 16) PW 16 Arvind Shah Exh.75,
- 17) PW 17 Babsaheb Nejkar Exh.77,
- 18) PW 18 Nasaruddin Bagwan Exh.79
- 19) PW 19 Afzal Exh.82,
- 20) PW 20 A.S.I. Shriram Patil Exh.87,
- 21) PW 21 Police Constable Shinde who carried the attached property to C.A. Exh.91
- 22) PW 22 M.O.Appasaheb A. Suryavanshi, Exh.95
- 23) PW 23 Circle Officer, Eknath Nikam Exh.100
- 24) PW 24 I.O. Vinayak Jadhav Exh.102.

9. Prosecution also produced the inquest panchanama Exh.12, complaint Exh.43, panchanama of placde of offence Exh.80 regarding arrest of the accused and attachment of his clothes, post mortem notes Exh.96, C.A. report Exh.103 and 104 and the hand writing expert opinion. After considering the evidence adduced by the prosecution the learned Additional Sessions Judge came to the conclusion that the prosecution has proved beyond reasonable doubt that the accused assaulted Arati with knife and committed her murder. He therefore passed the order of conviction and sentenced as mentioned above.

10. Being aggrieved by the above mentioned order, the accused has filed the present appeal. In this appeal before us Shri Maneshinde, learned Advocate for the

accused has urged only three points. Firstly, he submitted that learned trial Judge has not properly appreciated the evidence on record. Secondly, he canvassed before us that the learned trial Judge has wrongly accepted the evidence of eye witness Suresh Javale Exh.64. According to him the said witness was not knowing the accused prior to the incident and as such it was necessary for the Investigating Officer to hold identification parade but admittedly such parade was not held and the said witness had seen the accused when he was in the police custody, so reliance cannot be placed on his testimony. The learned Advocate for the accused also submitted that the learned trial Judge has erred in accepting the alleged extra judicial confession made by the accused to the mother of deceased Arati. According to him, the learned trial Judge ought to have taken into consideration the fact that the accused had embraced the deceased after she had sustained injuries and as such there were blood stains on his shirt. According to him, considering this state of evidence, the learned trial Judge ought to have given benefit of doubt to the accused. He, therefore, submitted that the appeal be allowed and the accused be acquitted.

11. As against this, the learned APP submitted that admittedly accused was present at the place of offence. there are eye witnesses who had seen the accused and deceased just prior to the incident, witness Suresh

Javale is an independent eye witness who has clearly stated that accused assaulted Arati. Besides this there is circumstantial evidence to connect the accused with the crime in question. He, therefore, submitted that the learned trial Judge has rightly convicted the accused and appeal be dismissed.

12. It is not in dispute that deceased Arati was residing in flat no.16, Parijat Hsg Scy A at Ichalkarnji. Admittedly, she was studying in Polytechnic college, Jaysingpur and accused was her classmate. It is an admitted fact that accused and deceased were in love with each other and accused had a desire to get married with deceased Arati. It is also not in dispute that on 5-4-1988 at about 12-30 noon in the open space which is near from Parijat Hsg Scy A, Arati had fallen on the ground in injured condition and from there she was removed to hospital where she was declared dead.

13. The first question which falls for consideration is whether the death of Arati is accidental, suicidal or homicidal. It is nobody's case that the death of Arati is accidental. However, though there is no direct suggestion to any of the witness that Arati committed suicide, a feeble attempt has been made to show that as the parents of Arati had declined to give her in marriage to accused and as Arati was having love with

accused she committed suicide at the said place. However, it must be noted that at the time of post mortem doctor noticed following external injuries on her body as mentioned in column no.17 of post mortem report.

1) Stab wound over right clavicle about 1" right lateral to sterno clavicular joint, elliptical in shape and transverse, 2 cms. x 1 cm. x bone and vessels deep.

2) Stab wound over the second right rib, 6 cms. away from middle over anterior chest wall with elliptical shape and 4 cms. below and right lateral to injury no.1, and parallel to injury no.1, 2 cm. x 1 cm. x lung deep, right medially and downwards transverse.

3) Stab wound over 3rd intercostal space 10 cms. away from mid-line on right side and 7 cms. below and right lateral to injury no.2 over anterior chest wall, elliptical in shape, size 1 1/2 cms. x 1 cm. x inter costal muscles deep, transverse, medially upwards.

of right clavicle 1" away from sterno clavicular joint.

14. If we take into consideration the nature of these injuries it is very difficult to believe that Arati would get herself injured in such manner and at such place. An attempt was made on behalf of defence to show that Arati was left-hander and looking to the nature of

injuries it can be said that the same must have been caused by herself. However, it is pertinent to note that it is nowhere even suggested to the parents of Arati or any other witness that Arati was left hander and it is only for the first time in his statement recorded under Section 313 of Cr.P.C. the accused has stated that Arati was left hander.

15. It must also be noticed that if at all Arati had any intention to commit suicide then she would not have committed it at such place and in such fashion. Admittedly, on that day at the relevant time she had gone to coaching class and she was returning from the said class. So, there was no possibility of Arati having any such weapon with her at that time. Besides this, if really she had made such an attempt, then accused could have prevented her from doing so because his presence at the said place right from the time Arati fell on the ground is admitted by the accused. So, considering all these aspects the learned trial Judge has rightly held that death of Arati is not suicidal and from the nature of injuries and further from the evidence on record it is clear that death of Arati is homicidal.

16. The main and material question is whether the injuries sustained by Arati were at the hands of the present accused. In order to prove this, the

prosecution is relying on direct as well as circumstantial evidence. Direct evidence consists of eye witness Suresh Javale PW 9 Exh.64 and PW 13 Baburao Naik Exh.71. Witness Suresh Javale has stated that on that day he had taken some carpentry work in a building situated near from Parijat Society and at about 12-30 noon when he was proceedings from the said place towards Sangli Octroi naka and reached upto the square near Parijat Society he saw one boy who was in yellow colour shirt and a girl wearing punjabi dress coming from the opposite direction and all of sudden the boy took a knife from his pocket of the trouser and gave 3 blows with it on the chest of girl and the said boy held the girl kissed her and kept her on the ground and then the said boy proceeded towards Parijat housing society. He has categorically stated that the accused before the Court is the same person whom he had seen assaulting the said girl at the relevant time. He has also frankly stated that he was not knowing the said girl or the boy prior to the incident. In fact, taking advantage of this, the learned Advocate for the accused strenuously argued before us that when the accused was not known to this witness and when the said witness has identified the accused for the first time in the court his evidence cannot be relied upon particularly when, admittedly, no identification parade was held by IO. It is true that normally when assailant was not known to the witness then it is necessary to hold identification parade. The

learned Advocate for the accused has drawn our attention to a case **Jaysing @ Gangawa Mesraj Kharariya and Anr. V/s State of Maharashtra 1999 Cr L.J.1687** wherein the Division Bench of this High Court disbelieved the testimony of the alleged eye witness who had not disclosed the incident to anybody till next day and was not knowing the accused prior to the incident and test identification parade was not conducted by IO. However in that case no sufficient explanation was given by the said witness for not disclosing the said incident to anybody. Moreover, that was not a case where accused was immediately found at the place of offence. The evidence of eye witness did not inspire confidence in the mind of the Judge and considering all those aspects it was held that testimony of such witness cannot be accepted in the absence of test identification parade. The learned Advocate for the defence has also placed reliance on a case **AIR 1979 SCC 1127 Kanan V/s State of Kerala** wherein also the Apex Court has held that where a witness identifies an accused who was not known to him prior to incident, for the first time in the court his evidence is absolutely valuable unless there has been previous test identification parade to test his power of observation. Similar view is also taken by the Apex Court in **AIR 1980 SC 1382 State Vs V.C.Shukla and Anr.** and in a case **1994 SCC (CRI) 1751 Thankayyan V/s State of Kerala**. We have carefully gone through the above mentioned cases. However, it has to be noted that in

none of the above mentioned cases it has been laid down by the Apex Court that under no circumstances the evidence of such eye witness should be accepted unless there is identification parade. On the contrary there are several authoritative pronouncements such as **AIR 2001 SC 1188 Daya Singh V/s State of Haryana** wherein the Apex court has observed that substantive evidence is the evidence of identification in court. Test identification parade does not constitute substantive evidence. Test identification parade provides corroboration to sworn testimony of a witness in court as to the identification of the accused. In appropriate cases the court may accept the evidence of identification in Court even without insisting of such or other corroboration. If the evidence of eye witness who identifies the accused in the court for the first time appears to the court fully reliable then certainly his evidence can be made basis for conviction. It is from this angle that it has been said that there is no rule of law that in each and every case where the accused is not known to the witness prior to the incident the evidence of such witness has to be discarded if there is no test identification parade.

17. This position is also reiterated even in the case which is cited by the learned advocate for the accused. He has placed reliance on a case **Dana Yadav V/s State of Bihar 2002 ALL MR (Cri) 2548 (SC)**. We have carefully

gone through the said ruling. In that case the accused was admittedly not known to the witness. After the incident he saw the accused for the first time in the Court after two years and identified him as the assailant. So, under such circumstances it was held that such evidence cannot be accepted in the absence of test identification parade. However, in the present case facts are quite different. The first thing which shall have to be noted here is that the present accused was found at the place of incident immediately after the incident. Moreover the eye witness Suresh Javale Exh.64 has stated that his statement was recorded on the same day in the evening. He has candidly admitted that at that time police showed him 5/6 accused who were in custody and out of them he identified the present accused as the person who was seen by him in the morning while assaulting Arati. It has been so stated by IO also. Though it is true that at that time the Police had not drawn any panchanama or they had not made arrangement for holding regular identification parade as such, the fact remains that witness has stated that when he was in police station the PI asked the said witness to identify the person to whom he had seen and he identified the present accused. So, due weightage shall have to be given to this fact under the circumstances of the case. So, from the impression on his mind and his memory he had identified the accused on the same day in the evening and thereafter in the Court. So, under the

circumstances, the trial Court rightly held that the non holding of identification parade is not fatal.

18. It must be noted that the evidence of this witness is not at all shaken or shattered in the cross examination. An attempt was made to bring on record some omissions and contradictions. However, the bare reading of his evidence would indicate that the said omissions and contradictions were not important and significant. Merely because this illiterate witness had not stated before the police as to how the meson did not accompany him or what was the exact time when they usually take break for tea etc., it cannot be said that there are material omissions. All material and relevant points with regard to incident were specifically stated by him before the Police and then from the witness box. An attempt was also made on behalf of the defense to show that this witness was once convicted. The witness has also frankly admitted that he was convicted for some sentence to pay fine of Rs.25/- for the offence punishable under Section 110 and 117 of Bombay Police Act. So, merely because once he was convicted in such manner his evidence cannot be discarded particularly when the offense for which he was convicted was not pertaining to moral turpitude. Similarly merely because at the relevant time this witness did not raise any shout or did not rush to help the victim and reacted in a particular manner it cannot be said that he was not

present at the place of incident. In fact we find that this witness has not at all made any exaggeration and has stated whatever he had seen. He has stated that entire incident with regard to assault took place within few seconds. When a stranger had seen accused assaulting young girl in such fashion with whom he was earlier speaking, it is difficult to believe that he would dare to rush to rescue her. It has also come on record that within few minutes or rather immediately after the assault some persons gathered there. So, merely because at that time he did not tell the people who had gathered there that he had seen the accused while holding the said girl, we cannot jump to the conclusion that testimony of this witness is not worthy of credence. We cannot ignore the fact that the accused had in fact not disappeared from the said place but had proceeded towards Parijat Society. So, having regard to all these circumstances, non holding of identification parade in the instant case is certainly not fatal as there is corroboration and conclusive evidence in the case. Thus, in our opinion the testimony of this eye witness Sushil Jawale is sufficient to prove the guilt of the accused.

19. The prosecution witness PW 10 Noorjah Exh.66 has also stated that her house is situated near from the place of incident behind Parijat Housing Society. She has further stated that on the day of incident at about

12-00 noon or so when her husband was sitting on the back side of their house he saw one girl and boy and he therefore asked her to see and when she saw towards that direction she found that one boy had fallen Arati on the ground and then he proceeded towards Parijat society. She has frankly stated that she had not seen the said boy previously but she noticed that the boy was wearing yellow colour shirt and it was blood stained. She has specifically stated that accused before the Court is the same boy. She had seen the said boy from a distance of about 50 to 60 ft. So, it is quite possible that she must have correctly identified the said person even in the Court. Thus the evidence of Noorjah corroborates the testimony of PW 9 Javale who has also stated that at the relevant time the accused was wearing yellow colour shirt.

20. The prosecution has examined other two witnesses viz. PW 4 Vishnu Arage Exh.33 and Baburao Naik Exh.71. These two persons are having their pan stalls near from the place of offence. According to the prosecution, these two witnesses had also seen the accused and the deceased at the said place just prior to the incident. Though, both these witnesses have been declared hostile, it is pertinent to note that so far as witness Vishnu Arage Exh.33 is concerned, he has stated in the cross examination that person shown to him in the Police custody on 6-4-1988 i.e. next date of the incident was

the same person to whom he had seen talking with one girl in front of his pan shop on the previous day. He has also stated that boy was wearing yellow colour shirt. So, to this extent the version of all these witnesses is quite cogent and consistent. Not only that, ASI Shriram Patil Exh.87 has also stated that when he reached at the place of offence immediately after the incident and took injured Arati in the police van somebody told him that assailant is sitting on the platform near Parijat society and as such he went there and he found the accused at the said place. So, he also took the accused in the Police van and at that time the accused was wearing yellow colour shirt. The evidence of ASI Shriram Patil is not shaken or shattered in the cross examination. There is no reason to disbelieve his evidence. On the contrary, even from the written say of the accused which is filed at Exh.117 it is very clear that the accused admits that he was taken in the police van at the relevant time. So, from this evidence also it is very clear that at the relevant time the accused was at the place of offence.

21. The prosecution witness No.18 Nasaruddin G. Bagwan who acted as a panch for arrest panchanama of the accused and attachment of his shirt, has also stated that on the same day in the afternoon when the police arrested the accused and drew the panchanama in the police station the accused was swearing yellow colour

shirt and there were blood stains on the said shirt. So, we find that there is abundant evidence on record which clearly indicates that at the relevant time the accused was actually present at the place of offence. He was wearing yellow colour shirt and it was found blood stained. There is also sufficient evidence to show that just few minutes prior to the incident the accused and the deceased were seen at the said place and it was noticed that there was some exchange of words between them.

22. The prosecution witness no.5 Vaijayanti Janib, mother of deceased Arati has stated that at the relevant time when she was in her house her neighbour Lilavati Birajdar PW 14 came to her and informed that Arati has fallen on the ground and therefore she and Lilavati Birajdar went down on the ground floor and started proceeding towards the place where Arati had fallen and at that time accused came from the said direction and he said "I killed your Arati". Both these witnesses have also stated that at the relevant time the accused was wearing yellow colour shirt and the same was blood stained. This statement of the accused is in fact an extra judicial confession. Shri Maneshinde, learned Advocate for the accused argued before us that extra judicial confession is a weak type of evidence and conviction cannot be based on the same. In support of this proposition he has placed reliance on a case **Jagtap**

V/s State of Haryana 1974 Cr.L.J. 1010. The proposition that generally extra judicial confession is treated as weak type of evidence is not disputed and cannot be disputed. However, in that case the extra judicial confession was found to be improbable by the Court and as such the same was not relied upon. While ascertaining the probative value of any extra judicial confession one has to take into consideration to whom the same is made at what time and place it is made, what were the other surrounding circumstances, the mental condition of the accused etc. However, in the instant case we find that PW 5 Vaijyanti Janib, mother of Arati was well known to the accused. The accused in his angry, desperate and disturbed condition assaulted his fiancée with knife when he found that there was no possibility of he getting married with her immediately. So, when he was in such frustrated mental condition though he killed Arati he did not run away from the said place but just went and sat on the platform. Naturally, when he was proceeding towards the platform he saw Vaijayanti going towards the place where Arati had fallen and hence he said that he killed her daughter Arati. This evidence of Vaijayanti is also corroborated by witness Mrs. Lilavati Birajdar Exh.74. Merely because Lilawati is a neighbour of Vaijyanti it cannot be said that she is an interested witness. There is nothing to show in this case that this witness had any animosity against accused as a result of which she would

go out of the way and depose false against accused in such serious case. So, under the circumstances of the case the evidence of these witnesses regarding accused making extra judicial confession is quite trustworthy. Incidentally, it must also be noted that even in the FIR Exh.35 which is admittedly lodged within about two hours from the incident the complainant Vaijyanti has made a reference of this extra judicial confession. It is very difficult to believe that within such short span of time it would strike to witness Vaijayanti that for creating evidence against the accused she should make a statement against the accused. It is difficult to believe that within such short time and in such a situation Vaijayanti would prepare any false or concocted story regarding the extra judicial confession. The evidence of Vaijayanti with regard to extra judicial confession cannot be discarded. The said evidence also lends support to the prosecution version and the said evidence together with other evidence is sufficient to hold the accused guilty of offence with which he is charged.

23. The prosecution has also examined witness by name Shirish V. Haldankar PW 11, who is also residing in flat no.14 of Parijat society. This witness has also stated that at the relevant time when he was in his gallery he saw the accused assaulting Arati with knife. He has further stated that as he was to go to Bombay and for that purpose wanted to get a bus scheduled at 1-00

p.m., he immediately rushed to ST stand without telling anybody even to his wife about the incident which he had seen. The learned trial Judge found the conduct of this witness abnormal and as such he has not placed reliance on this witness. However, merely because the evidence of this witness is not accepted that does not mean that the other evidence produced by prosecution was not sufficient.

24. It is pertinent to note that even according to the accused he was present at the spot immediately after the time Arati fell on the ground. It is crystal clear from the evidence on record that at the relevant time he was wearing yellow colour shirt and several witnesses mentioned above have stated that the said shirt was stained with blood. In order to give some explanation about the said blood stains the accused has tried to introduce a case that when he was taken in the van along with Arati he kept the head of Arati in his lap and had taken her near his chest and as such his shirt was blood stained. However, it must be noted that ASI Shriram Patil has categorically denied the suggestion put to him in this behalf. It is very difficult to believe that when Arati was assaulted with knife and sustained severe injuries and accused was taken as an assailant by police they would allow him to go near the body of Arati and to take Arati near his chest. So, the defence of the accused in this behalf is not only improbable but is

certainly false.

25. The prosecution has produced C.A. report at Exh.103 and 104. From the perusal of the same it is quite evident that clothes of the deceased were blood stained and the said blood was of "A" group. It is tried to be suggested that evidence with regard to attachment of clothes of the deceased and blood sample of the accused and blood sample of deceased is not trustworthy. However, it is very clear that articles 14 and 15 were found on the person of deceased and the same were attached under panchanama and then sent to C.A. The said clothes were stained with blood which was of "A" blood group. Similarly, articles 11 and 12 which are shirt and pant of the accused were also having blood of "A" group. It has come on record that blood group of accused is "B". Moreover, admittedly, there were no injuries on the person of accused. So, there was no question of having any blood of accused on his shirt and pant. Thus, we find that blood group of deceased Arati and blood group of the blood found on the clothes of the accused was same and it is clinching circumstance which connects the accused with the crime. We are not at all inclined to accept the explanation given by the accused as to why his clothes were found stained with blood of "A" group.

26. From the above discussion it is very clear that

admittedly deceased Arati and accused were known to each other. They had love affair. They had in fact decided to marry with each other but the parents of deceased Arati were opposing the said marriage and saying that unless the accused completes his education and settles Arati should not get married with accused and this was in fact accordingly informed to accused and as a result of the same he was totally disturbed and frustrated. It is under these circumstances the accused behaved in excentric manner and assaulted deceased Arati with knife. The evidence of PW 5 Vaijayanti Janib Exh.34, father of deceased Anil Janib Exh.63, eye witness Suresh Javale Exh.64, witness Noorjanbi Jamdar Exh.66, Dr.Dattatraya M. Chougule Exh.70, Lilavati Birajdar Exh.74, Nasaruddin G. Bagwan Exh.79, Afzal Abdul Bagwan Exh. 82, ISI Shriram S. Patil Exh.87, IO Vinayak V. Jadhav Exh.102 is quite cogent, consistent and convincing to show that accused was actually seen by the eye witness while assaulting Arati with knife. Just prior to that he was seen with Arati so also immediately after assault he was found at the said place and was taken in custody by police. Thus, having considered the totality of evidence the learned trial Judge has rightly held that the prosecution has proved beyond reasonable doubt that the accused assaulted Arati with knife at the relevant time and thereby committed her murder. In our considered view there is absolutely no necessity to interfere with the said finding.

27. Hence the appeal is dismissed. The accused to surrender within two weeks, failing which the trial Court to take necessary steps to arrest the accused and send him to jail to undergo the punishment of life imprisonment.

(D.G.DESHPANDE, J)

(S.R.SATHE, J.)

